

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

To:
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PCT

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

		Date of mailing (day/month/year) 16 DEC 2004
Applicant's or agent's file reference 630666.00007		FOR FURTHER ACTION See paragraph 2 below
International application No. PCT/US04/20842	International filing date (day/month/year) 29 June 2004 (29.06.2004)	Priority date (day/month/year) 01 July 2003 (01.07.2003)
International Patent Classification (IPC) or both national classification and IPC IPC(7): C08J 5/12; A61F 2/28 and US Cl.: 523/113, 114, 115, 116; 424/423, 424		
Applicant 630666 00007		

1. This opinion contains indications relating to the following items:

<input checked="" type="checkbox"/>	Box No. I	Basis of the opinion
<input type="checkbox"/>	Box No. II	Priority
<input type="checkbox"/>	Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
<input type="checkbox"/>	Box No. IV	Lack of unity of invention
<input checked="" type="checkbox"/>	Box No. V	Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
<input type="checkbox"/>	Box No. VI	Certain documents cited
<input type="checkbox"/>	Box No. VII	Certain defects in the international application
<input type="checkbox"/>	Box No. VIII	Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/ US Mail Stop PCT, Attn: ISA/US Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 Facsimile No. (703) 305-3230	Authorized officer James Seidleck Telephone No. 703-308-0661
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International application No.

PCT/US04/20842

Box No. I Basis of this opinion

1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
 This opinion has been established on the basis of a translation from the original language into the following language _____, which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material
 a sequence listing
 table(s) related to the sequence listing
 - b. format of material
 in written format
 in computer readable form
 - c. time of filing/furnishing
 contained in international application as filed.
 filed together with the international application in computer readable form.
 furnished subsequently to this Authority for the purposes of search.
3. In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

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Box No. V Reasoned statement under Rule 43 bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims <u>3, 6-17, 19, 23-25</u>	YES
	Claims <u>1-2, 4-5, 18, 21-22</u>	NO
Inventive step (IS)	Claims <u>3, 6-17, 19, 23-25</u>	YES
	Claims <u>1-2, 4-5, 18, 21-22</u>	NO
Industrial applicability (IA)	Claims <u>1-25</u>	YES
	Claims <u>NONE</u>	NO

2. Citations and explanations:

Claims 3, 6-17, 19 and 23-25 meet the criteria set out in PCT Article 33(2)-(3), because the prior art does not teach or fairly suggest a composition comprising a macromer comprising the reaction of an unsaturated diacid and a saturated diacid, and a bioactive ceramic grafted to the macromer, wherein the composition can include a polypropylene fumarate, and a bioactive ceramic is grafted to the macromer wherein a macromer contains silane units, and a composition is cross-linkable by using a free radical initiator as a cross-linking agent.

Claims 1-2, 4-5, 18 and 21-22 lack novelty under PCT Article 33(2) as being anticipated by BAJRAI U.S. Patent 4,668,295. BAJRAI discloses polyfunctional carboxylic acids and hydroxyapatite as a bioactive ceramic, column 1, lines 55-61 and column 2, line 44-45 and 53. The polyfunctional acids can be saturated or unsaturated, column 2, lines 2-3 and 10-13. The acids can be used in combination (unsaturated diacid and saturated diacid) in light of the benefit to control setting properties. In the Tables 1-2, fumaric acid and alpha-ketoglutaric acid are readable in applicants' claims. Hydroapatite is readable as a bone substitute bioactive ceramic. The composition can include polymeric material, column 3, lines 45 and 60. Polylactic acid and poly(meth)acrylic acid are compatible with the polyfunctional carboxylic acids for making surgical cements.

Claims 1-25 meet the criteria set out in PCT Article 33(4), and thus have industrial applicability because the subject matter claimed can be made or used in industry.